In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 1043 of 2006

Date of Decision: September 21, 2006

Umed Singh

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Ram Kumar Malik, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The order dated 28.10.2005 (P-3) passed by the Executive Engineer, Water Service Mechanical Division, Rewari-respondent No. 3, is the subject matter of challenge in the instant petition. According to the aforementioned order the pay of the petitioner has been re-fixed and a recovery of an amount of Rs. 1,15,974/- has been found against him. It has further been prayed that direction be issued to the respondents to release Rs. 50,000/- of

gratuity amount and Rs. 1,58,000/- as leave encashment, which have been withheld on the allegation of aforementioned recovery.

The petitioner has been working on various posts in the respondent department and was eventually promoted in May 1997 as Special Foreman. He retired as such on 31.3.2005. After his retirement, on 30.5.2005 a show cause notice was issued to him to which he submitted his reply on 11.6.2005. The impugned order dated 28.10.2005 (P-3) has been passed on the basis of the show cause notice issued to the petitioner after his retirement in which recovery of Rs. 1,15,974/- has been ordered to be effected from the petitioner. According to the assertion made by the petitioner there was no concealment on his part or any misrepresentation in obtaining the pay scale and the benefit thereunder. The petitioner has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Sahib Ram v. State of Haryana, 1995 Supp(1) SCC 18**, wherein the aforementioned principle has been reiterated and further clarified. Although the petitioner has attacked the order on merit, yet, at the time of argument Mr. Ram Kumar Malik, learned counsel, on instructions from the petitioner has stated that he would accept the re-fixation as made by the respondents but no recovery be effected from him.

In the written statement the stand taken by the respondents is that the rights of the petitioner have crystallized after filing the suit which culminated in passing of judgment and decree dated 30.10.1999. According to the judgment, office order dated

20.3.1995, based on the audit objection dated 13.3.1995, was found to be illegal as the order was passed without granting any opportunity of hearing to the petitioner. A copy of the judgment and decree, dated 30.10.1999 has been placed on record as Annexure R-1 along with an order dated 7.2.2005, correcting a clerical mistake in the judgment. It was in pursuance to the aforementioned direction issued by the Civil Court that a show cause notice was issued to the petitioner and thereafter recovery was sought to be effected. The written statement further assert that after granting personal hearing to the petitioner, the impugned order of re-fixation of his pay was passed and it was found that there was huge recovery to be effected from the petitioner.

Having heard the learned counsel for the parties, we are of the view that once the petitioner has not misrepresented any fact with regard to grant of excessive emoluments then no recovery could be made from his leave encashment or gratuity. The aforementioned principle is now widely accepted as has been laid down by Hon'ble the Supreme Court in Sahib Ram's case (supra). Therefore, we uphold the order to the extent it re-fixes the pay of the petitioner but quash the same in respect of effecting recovery from the petitioner of an amount of Rs. 1,15,974/-. Once the recovery of the excess amount is held to be illegal and the order is quashed to that extent then the respondents are not within their legal rights to withhold any amount of leave encashment or gratuity or any other retiral benefits.

In view of the above, the writ petition is allowed. The impugned order dated 28.10.2005 (P-3), to the extent of making

recovery of excess amount from the petitioner, is set aside. As a consequence, the respondents are directed to release all arrears of the petitioner including payment of Rs. 50,000/- as gratuity and an amount of Rs. 1,58,000/- on account of leave encashment or any other retiral benefits which are payable to the petitioner. The needful shall be done within a period of one month from the date of receipt of certified copy of this order.

The copy of this order be given dasti on payment of usual charges.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 21, 2006
Pkapoor